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**OCT 26 2010**

**OFFICE OF PETITIONS**

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In re Patent No. 7,570,282 :  
Michael Kaplinsky :  
Issue Date: August 4, 2009 : DECISION ON  
Application No. 09/209,982 : PATENT TERM ADJUSTMENT  
Filed: December 9, 1998 :  
Attorney Docket No. M4065.0858/P858 :

This is a decision on the "REPLY TO DECISION DISMISSING REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT", filed May 21, 2010.

The application for patent term adjustment is **DISMISSED**.

On April 26, 2010, the Office mailed a "DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH". The decision stated that the request was ineligible for consideration. With the instant request for reconsideration, Patentee argues that because an RCE was filed on October 31, 2005 (i.e. after May 29, 2000), the patent is eligible for patent term adjustment.

The Patent Term Guarantee Act of 1999 amended 35 U.S.C. § 154 to include § 154(b), which provides for adjustment of patent term due to examination delay. The provisions of § 154(b) relate to adjustment of patent term due to administrative delays apply only to original applications, other than designs, filed on or after May 29, 2000. Patentee argues that the instant application is eligible because an RCE was filed after May 29, 2000. Patentee's

argument has been considered, but is not persuasive. As stated in MPEP 2730:

37 CFR 1.702(f) provides that the provisions of 37 CFR 1.702 through 1.705 apply only to original (i.e., non-reissue) applications, except applications for a design patent, filed on or after May 29, 2000, and patents issued on such applications. Since a continued prosecution application (CPA) filed under 37 CFR 1.53(d) is a new (continuing) application, a CPA filed on or after May 29, 2000, and before July 14, 2003, is entitled to the benefits of the patent term adjustment provisions of 35 U.S.C. 154(b) and 37 CFR 1.702 through 1.705. Since a request for continued examination (RCE) filed under 35 U.S.C. 132(b) and 37 CFR 1.114 is not a new application (it is a submission in a previously filed application), filing an RCE in an application filed before May 29, 2000, does **not** cause that application to be entitled to the benefits of the patent term adjustment provisions of 35 U.S.C. 154(b) and 37 CFR 1.702 through 1.705.

Since the filing date of this application, December 9, 1998, is before May 29, 2000, this application is not eligible for patent term adjustment due to examination delay.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo at (571)272-3207.



Anthony Knight  
Director  
Office of Petitions